Supreme Court, U.S.
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No. 01-1535

IN THE

Supreme Court of the United States

DONALD M. CASSATA, Director of the Adams County Department of Social Services, and ADAMS COUNTY BOARD OF SOCIAL SERVICES,

Petitioners,

v.

FRANCES F. WESTON, CHRISTINE M. KNEUBEHL, and SHAUNA DISHER, on behalf of themselves and all others similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF COLORADO

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether this Court should decline to exercise jurisdiction on prudential grounds where review is sought on a substantive judgment that is entirely supported by adequate and independent state law grounds, with the only independent federal question presented by an ancillary award of attorney's fees.

Whether the Colorado Court of Appeals erred in concluding, as a matter of state law, that the Colorado statutes, regulations, policies and practices that implement the Colorado Works Program create a protectable property interest in a family's continuing receipt of welfare benefits.

Whether the additional issues discussed in the Petition are beyond the scope of the Question Presented stated by Petitioners, and were waived in the proceedings below, and therefore are not subject to review.

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents ii

Table of Cited Authorities iv

Statement on Jurisdiction 1

Response to Statement of the Case 1

Reasons for Denying the Writ 5

I. This Court Should Not Exercise Its Jurisdiction On Prudential Grounds Because The Only Relief Awarded By The State Court That Is Not Supported By Adequate And Independent State Law Grounds Is Its Award Of Attorney's Fees. 5

II. As Authoritatively Construed By Colorado's Courts, Colorado Law Creates A Constitutionally Protected Property Interest In The Continued Receipt Of Benefits Under The Colorado Works Program Act. 8

A. Property interests, for due process analysis, are created and defined by state law. 8

Contents

Page

B. The Respondents' property interest in continuing welfare benefits arises from Colorado state law and regulations. . . . 10

C. The "no entitlement" language of the federal PRWORA has no effect on the Respondent's property interest in continuing welfare benefits. 12

III. This Court Should Not Review Issues That Are Not Fairly Included Within The Question Presented. 15

A. The record fully supports the trial court's conclusion that the sanction notices were constitutionally inadequate. 15

B. The *Parratt/Hudson* doctrine is inapposite in this case because the deprivation of property by Petitioners was not "random and unauthorized." . . 17

Conclusion 18

TABLE OF CITED AUTHORITIES

Page

Cases:

Bell v. Burson, 402 U.S. 533 (1971) 10

Bishop v. Wood, 426 U.S. 341 (1976) 9

Board of Regents v. Roth, 408 U.S. 564 (1972) ... 9

Braxton v. United States, 500 U.S. 344 (1991) 7

California v. Freeman, 488 U.S. 1311 (1989) 5

Cleveland Bd. of Educ. v. Loudermill, 4701 U.S. 532 (1985) 9

Coleman v. Thompson, 501 U.S. 722 (1991) 5

Dilda v. Quern, 612 F.2d 1055 (7th Cir. 1980) 16

Doston v. Duffy, 732 F. Supp. 857 (N.D. Ill. 1988) ... 16

Fox Film Corp. v. Muller, 296 U.S. 207 (1935) ... 5

Goldberg v. Kelly, 397 U.S. 254 (1970) 14, 17

Goss v. Lopez, 419 U.S. 565 (1975) 9

Gray Panthers v. Schweiker, 652 F.2d 146 (D.C. Cir. 1981) 16

Cited Authorities

	Page
Harris v. Reed, 489 U.S. 255 (1989)	5
Herb v. Pitcairn, 324 U.S. 117 (1945)	5
Hillsborough County v. Automated Med. Labs., 471 U.S. 707 (1985)	13
Hudson v. Palmer, 468 U.S. 517 (1984)	17, 18
Hutto v. Finney, 437 U.S. 678 (1978)	7
Izumi Seimitsu Kogyo Kabushiki Kaisha v. United States Philips Corp., 510 U.S. 27 (1993)	15
Jacobs v. Visconsi & Jacobs Co. v. City of Lawrence, 927 F.2d 1111 (10th Cir. 1991)	10
Lambrix v. Singletary, 520 U.S. 518 (1997)	5
Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982)	9, 18
Meyer v. New Jersey Dep't of Human Servs., 635 A.2d 544 (N.J. App. Div. 1993)	16
Michigan v. Long, 463 U.S. 1032 (1983)	5
Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981)	8, 11, 14

Cited Authorities

	Page
Missouri v. Jenkins by Agyei, 491 U.S. 274 (1989)	7
Moran v. Pima County, 474 U.S. 989 (1985)	7
New York v. Federal Energy Regulatory Comm'n, __ U.S. __, 122 S. Ct. 1012 (2002)	13
Ortiz v. Eichler, 616 F. Supp. 1046 (D. Del. 1985), *aff'd*, 794 F.2d 889 (3d Cir. 1986)	16
Parratt v. Taylor, 451 U.S. 527 (1981)	17, 18
Perry v. Sindermann, 408 U.S. 593 (1972)	9, 14
Reynolds v. Guiliani, 35 F. Supp. 2d 331 (S.D.N.Y. 1999)	10
RRI Realty Corp. v. Incorporated Village of Southampton, 870 F.2d 911 (2d Cir. 1989)	10
Saenz v. Roe, 526 U.S. 489 (1999)	13
Vanderbeek v. Vernon Corp., 25 P.3d 1242 (Colo. Ct. App. 2000)	17
Weaver v. Colorado Dep't of Social Services, 791 P.2d 1230 (Colo. Ct. App. 1990)	3
Yee v. City of Escondido, 503 U.S. 519 (1992)	17

Cited Authorities

Page

United States Constitution:

Article III 5

Eleventh Amendment 7

Fourteenth Amendment 8, 9, 14

Statutes:

Colo. Rev. Stat. § 24-4-106(7) 6

Colo. Rev. Stat. § 26-2-704(1) 13

Colo. Rev. Stat. § 26-2-709(1)(a) 11

Colo. Rev. Stat. § 26-2-710(3) 11

Colo. Rev. Stat. §§ 27-2-201, *et seq.* 3

28 U.S.C. § 1257 1

42 U.S.C. §§ 601, *et seq.* 1

42 U.S.C. § 601(b) 12, 14

42 U.S.C. § 1983 ..... 6, 7, 8, 9

42 U.S.C. § 1988 ..... 1, 7

Pub. L. 104-193, 110 Stat. 2105 1

Cited Authorities

Page

Rule:

S. Ct. R. 14(1)(a) 15

Other Authorities:

9 Colorado Code of Regulation 3.615.1 11

9 Colorado Code of Regulation 3.830 11

9 Colorado Code of Regulation 2503-1 11

STATEMENT ON JURISDICTION

This Court technically has jurisdiction pursuant to 28 U.S.C. § 1257. Nevertheless, this Court should decline to exercise its jurisdiction on prudential grounds when all of the substantive relief awarded in the judgment below is supported by adequate and independent state law grounds, and the only independent federal question arises from the trial court's ancillary award of attorney's fees under 42 U.S.C. § 1988, particularly when the underlying decision pursuant to 42 U.S.C. § 1983 is premised on a state court's construction of that state's law.

RESPONSE TO STATEMENT OF THE CASE

Respondents incorporate by reference the statements of facts in the opinions of the Colorado Court of Appeals and the District Court, as presented in the Appendices accompanying the Petition.[1]

In contrast to the presentation of facts set out in the Petition by Petitioners Donald M. Cassata and the Adams County Board of Social Services (herein, "Petitioners" or "Adams County"), the following facts are particularly noteworthy:

First, at no time in this case have Respondents sought relief under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Pub. L. 104-193, 110 Stat. 2105 (codified principally at 42 U.S.C. §§ 601, *et seq.*). Respondents have never alleged

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1. Citations to these appendices are presented in the form "App. X, at xx."

that the federal statute created any kind of property right in the continued receipt of benefits. Rather, Respondents always have maintained that their protectable property interest for purposes of due process analysis arises exclusively from Colorado state law. *See* R., I, 115-187A; II, 396-473; VI, 1399-1403; VI , 1470-1533; VII, 1668-1682; X, 77-93.[2]

Second, the Record amply demonstrates, as the trial court found and the appellate court affirmed, that each member of the plaintiff class was eligible for cash assistance benefits under the CWPA. *See* App. A, at 3a; App. B, at 34a. As a result, under the Colorado statutory scheme for the Colorado Works Program, Petitioners lacked discretion, without some defined good cause as set out in the CWPA, to reduce or terminate the continuing cash assistance that these class members were receiving. *See* App. B., at 22a-23a. The Record includes direct testimony by Adams County officials, including Petitioner Cassata, admitting that Adams County lacked any discretion under state law to reduce or discontinue cash assistance benefits to eligible participants. *See* R., XIII, 239 and 263, 266. Similarly, state officials from the Colorado Department of Human Services ("CDHS"), the state agency responsible for overseeing county administration of welfare programs, including the Colorado Works Program, confirmed at trial that Adams County officials lacked discretion under state law to deny cash assistance benefits to eligible participants. *See* R., XIII, 27 and 75.

Third, the trial court found as a matter of fact, and the appellate court affirmed, that Petitioners had pursued an

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2. Citations to the multi-volume trial court Record in this case, which was certified by the District Court to the Colorado Court of Appeals, are presented in the form "R., X, xx-xx."

intentional policy of refusing to provide adequate sanction notices to participants in the Colorado Works Program even after Colorado's administrative law judges and state officials ruled that the notices Petitioners were using to impose sanctions under the Colorado Works Program Act ("CWPA"), Colo. Rev. Stat. §§ 27-2-201, *et seq.*, were inadequate under Colorado state law and regulations, and therefore of no legal effect under Colorado law. *See* App. A, at 3a-4a; R., XIII, 47 and 244, 245-46 and 277-78. In fact, as the trial court concluded, in a finding that was not challenged on appeal, Petitioners pursued a policy of intentionally seeking to avoid judicial review (within the Colorado administrative law system) of the adequacy of their sanction notices in a purposeful venture to avoid providing notices that would give adequate and accurate information to participants in the Colorado Works Program. *See* App. B, at 32a and 42a; *see also* App. A, at 17a.

Fourth, based on its exhaustive canvass of the thousands of sanction notices that were introduced into evidence during the trial, the District Court found, as a matter of fact and state law under the Colorado Administrative Procedures Act ("Colorado APA"), that all of the sanction notices were legally defective, and that as a result, Colorado law dictated that the sanctions issued by Adams County pursuant to these defective notices were of no legal effect. *See* App. B, at 23a-26a and 47a; *see also Weaver v. Colorado Dep't of Social Services*, 791 P.2d 1230, 1233 (Colo. Ct. App. 1990) (holding that sanctions imposed pursuant to legally inadequate sanction notices are void). The trial court's substantive conclusion that the sanction notices were defective under state law were not challenged by Petitioners in their direct

appeal to the Colorado Court of Appeal.[3] Petitioners also failed to challenge this state-law conclusion in their petition for certiorari review before the Colorado Supreme Court.

Finally, the Record demonstrates that the effects of the punitive sanctions imposed on the basis of these inadequate notices were disastrous for the families involved. Families at the edge of poverty when they entered the Colorado Works Program were, as a result of the sanctions, bereft of their sole source of support. One class representative testified that she was left with no choice but to move out of state and away from the five grandchildren for whom she had been caring. *See* R., XIV, 157. Another class representative testified that her family became homeless as a result of the loss of cash assistance. *See* R., XIV, 97. For all members of the plaintiff class, the consequences of Petitioners' conduct were real and tragic.[4]

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3. With respect to the trial court's judgment of a violation of the Colorado APA arising from sanction notices that were defective under the state regulations, Petitioners' only challenge on appeal attacked the trial court's determination that there was no requirement to exhaust administrative remedies for this claim. The appellate court conclusively rejected this argument on state-law grounds. *See* App. A, at 17a. Petitioners' did not challenge, either before the Colorado Court of Appeals or the Colorado Supreme Court, the trial court's findings of substantive violations of the state regulations.

4. Both the trial court and the Colorado Court of Appeals denied motions by Petitioners to stay the operation of the injunctive and equitable relief awarded by the trial court. Subsequently, at oral argument before the Colorado Court of Appeals, counsel for Petitioners indicated that in the event the trial court's judgment were reversed, Petitioners would not seek to require Respondents or members of the plaintiff class to pay back the moneys that have been reimbursed to them as a result of the trial court's equitable relief.

REASONS FOR DENYING THE WRIT

I.

This Court Should Not Exercise Its Jurisdiction On Prudential Grounds Because The Only Relief Awarded By The State Court That Is Not Supported By Adequate And Independent State Law Grounds Is Its Award Of Attorney's Fees.

This Court will not review a question of federal law decided by a state court if the judgment of that state court rests on a state law ground that is independent of the federal question and adequate to support the judgment. *See Coleman v. Thompson*, 501 U.S. 722, 729 (1991); *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935). Moreover, in the context of a petition seeking certiorari review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional. *See Coleman*, 501 U.S. at 729.

Under this doctrine, when a state court judgment is "clearly and expressly" based upon state law, then the Supreme Court lacks jurisdiction to review any federal question that might be separately raised in the case. *See Harris v. Reed*, 489 U.S. 255, 261 (1989); *California v. Freeman*, 488 U.S. 1311, 1313 (1989) (O'Connor, J., sitting as Circuit Justice); *cf. Michigan v. Long*, 463 U.S. 1032, 1041 (1983) (requiring a "plain statement" of the state law basis of a state court judgment to avoid federal question review). To reach a decision on a federal question under circumstances where the judgment below is independently supported by an adequate state law basis would amount to an advisory opinion, which is barred by the limitations on the judicial power set out in Article III of the United States Constitution. *See Lambrix v. Singletary*, 520 U.S. 518, 523 (1997); *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945).

In this case, Respondents brought suit against Petitioners on three separate causes of action, with two of those causes arising solely under state law, *i.e.*, the Colorado APA and the due process clause of the Colorado Constitution. *See* R., I, 115-187A. Only the third cause of action in this case — the claim under 42 U.S.C. § 1983 — arose under federal law. *See id.*

The trial court found in favor of Respondents on all three causes of action, including the two state-law claims. *See* App. B, at 47a-48a. In connection with the violations of state law, the trial court concluded that Adams County's sanction notices failed to meet the specific requirements of the administrative regulations promulgated by CDHS for sanctions in cases under the CWPA. *See* App. B, at 23a-26a and 47a. The trial court also concluded that the sanction notices failed to provide due process under the Colorado Constitution. *See* App. B., at 40a-42a and 47a-48a.

All of the substantive relief sought and received by the Respondents — a declaration that prior sanction notices were unlawful, an injunction requiring adequate notices going forward, and equitable remedies aimed at reversing the prior sanctions — was fully supported under Respondents' state-law claim pursuant to the Colorado APA. *See* Colo. Rev. Stat. § 24-4-106(7) (providing Colorado courts with authority to reverse an administrative adjudication for violations of applicable state law or regulations). Moreover, the trial court's conclusion that Petitioners had violated the Colorado APA was reached independently of the trial court's analysis of the due process issues under the Section 1983 claim. *Compare* App. B., at 23a-26a *with* App. B, at 40a-42a.

The only relief provided by the trial court that arguably was not explicitly awarded pursuant to Respondents' Colorado APA claim was the ancillary award of attorney's fees, which the trial court specified as arising under 42 U.S.C. § 1988. *See* App. B., at 51a.

Thus, in this case, because the substantive relief awarded by the trial court is entirely supported by adequate and independent state law grounds, the only basis for this Court's potential jurisdiction here is the trial court's award of ancillary attorney's fees. Under such circumstances, there is no prudential reason to grant the Writ solely to review a federal question that could be implicated, if at all, ***only*** in connection with an award of attorney's fees. *Cf. Hutto v. Finney*, 437 U.S. 678, 695 (1978) (holding that an award of attorney's fees under Section 1988, when ancillary to an order providing prospective injunctive relief, does not implicate the Eleventh Amendment); *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 279-80 (1989) (same); *compare Moran v. Pima County*, 474 U.S. 989 (1985) (denying *certiorari*, over dissent of Justice White, in case presenting question of propriety of awarding attorney's fees on a claim pursuant to 42 U.S.C. § 1983). Indeed, because the principal purpose for which this Court exercises its *certiorari* jurisdiction is to resolve important conflicts among the Circuit Courts of Appeal and the state courts concerning the meaning of provisions of federal law, *see Braxton v. United States*, 500 U.S. 344, 347 (1991), there is no prudential reason to review this case when the substantive judgment below depends entirely on interpretations of state law.

II.

As Authoritatively Construed By Colorado's Courts, Colorado Law Creates A Constitutionally Protected Property Interest In The Continued Receipt of Benefits Under The Colorado Works Program Act.

This Court lacks authority to overturn a construction of state law authoritatively reached by a state court. *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 484-85 & n.9 (1981) ("Even if the state court should tell us that a state statute has a meaning that we believe the state legislature plainly did not intend, we are not free to take our own view of the matter."). Thus, as shown below, even if the Court were to exercise its jurisdiction to review this case, despite the adequate and independent state law grounds for all of the substantive relief awarded by the trial court, this Court's review would be confined by the authoritative construction of the state law — the CWPA — that was reached by the trial court, affirmed by the appellate court, and left undisturbed by the Colorado Supreme Court. *See* App. A, at 8a-9a and 13a; App. B., at 36a-38a. Because the single issue raised by Petitioners in their Petition — whether Respondents enjoyed a constitutionally protectable "property" interest — was decided on the basis of state law, there is no basis for the Court to grant the Writ here.

A. Property interests, for due process analysis, are created and defined by state law.

In this case, in addition to their state-law claims, Respondents sought relief under 42 U.S.C. § 1983 for being deprived of rights guaranteed under the Due Process Clause of the Fourteenth Amendment of the United States

Constitution. *See* R., I, 115-187A. Respondents alleged that they had been deprived of property without due process of law when their cash assistance benefits under the Colorado Works Program were reduced without an adequate notice and opportunity to be heard. *See id.* The essence of Respondents' due process claim under 42 U.S.C. § 1983 was their contention that the notices issued by Adams County prior to imposing sanctions on the Respondents were factually and legally inadequate to give Respondents a reasonable opportunity to be heard on the merits of the sanctions. *See id.* In making this claim, Respondents were required to show that they had a protectable property interest in the money being withheld by Petitioners. *See Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Respondents asserted that their "property," for purposes of due process analysis, lay in their right based on Colorado state law to continue to receive cash assistance under the Colorado Works Program for as long as they continued to meet eligibility criteria. *See* R., I, 115-187A.

Property interests that may be protected on due process grounds arise and are defined by virtue of ***state*** law. *See Perry v. Sindermann*, 408 U.S. 593, 601 (1972); *see also Cleveland Bd. of Educ. v. Loudermill*, 4701 U.S. 532, 538 (1985); *Goss v. Lopez*, 419 U.S. 565, 573 (1975); *Bishop v. Wood*, 426 U.S. 341, 345-46 (1976). A property interest that is protected by the Due Process Clause of the Fourteenth Amendment is one that arises from "such rules or mutually explicit understandings" that support an expectation of a benefit. *See Perry*, 408 U.S. at 601; *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) ("The hallmark of property, the Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'").

Indeed, the cases are uniform that when a state official lacks discretion in connection with a person's receipt of a government benefit, or when a government benefit may be withdrawn only upon a showing of a specific good cause, then the government benefit is deemed to be "property" within the meaning of the Due Process Clause. *See, e.g.*, *Jacobs v. Visconsi & Jacobs Co. v. City of Lawrence*, 927 F.2d 1111, 1116 (10th Cir. 1991); *RRI Realty Corp. v. Incorporated Village of Southampton*, 870 F.2d 911, 918 (2d Cir. 1989). Similarly, once a government benefit has been granted pursuant to a state law or regulation, the constitutionally protected property interest in that benefit continues for the duration of the benefit. *See Bell v. Burson*, 402 U.S. 533, 539 (1971); *see also Reynolds v. Guiliani*, 35 F. Supp. 2d 331, 341 (S.D.N.Y. 1999) (holding that welfare recipients in New York, funded by the same federal TANF program at issue in this case, "have an overarching property interest in their continued receipt of . . . cash assistance").

B. The Respondents' property interest in continuing welfare benefits arises from Colorado state law and regulations.

The trial court and the Colorado Court of Appeals in this case both concluded that under that state statute in question here — the CWPA — as well as under the extensive factual record, Respondents' interest in the continued receipt of cash assistance from the Colorado Works Program is "property" for purposes of due process analysis. *See* App. A., at 13a; App. B. at 35a-36a. The legal basis for this conclusion emanates exclusively from the language of the CWPA and its implementing regulations, which are replete with various mandatory provisions requiring county officials to award cash assistance to an eligible participant; these statutes and regulations

do not permit any discretion to county officials to deny or reduce cash assistance to eligible participants without a specifically defined cause. *See* Colo. Rev. Stat. § 26-2-709(1)(a) (expressing in mandatory language the requirement that eligible participants "shall receive" cash assistance); § 26-2-710(3) (mandating the continuation of cash assistance during an administrative appeal); 9 Colorado Code of Regulations 2503-1, §§ 3.830 and 3.615.1.

Both the trial court and the appellate court recognized that under Colorado state law, Petitioners have no discretion other than to award cash assistance to a person who meets the low-income and other eligibility requirements of the Colorado Works Program. *See* App. A, at 13a; App. B, at 36a. This conclusion is also supported by the extensive factual record in which Adams County officials testified that they lacked discretion under applicable state laws and regulations with respect to continuing to provide benefits for eligible participants. *See* R., XIII, 239; XIII, 263 and 266.

The state-law basis of the Respondents' "property" interest in the continued receipt of cash assistance is apparent from the court opinions in this case, which recite ***only*** state statutory and regulatory provisions indicating that the receipt of benefits is mandatory. *See* App. A, at 8a; App. B, at 36a. Because this Court is bound by a state court's interpretation of that state's law, Petitioners cannot overcome the ***state-law*** foundation of the Colorado courts' decisions in this case. *See Clover Leaf Creamery*, 449 U.S. at 484-85. That is, as a matter of Colorado state law, the "no entitlement" language of the CWPA does not extinguish the Respondents' property interest. *See* App. A, at 13a; App. B, at 36a-38a.

C. The "no entitlement" language of the federal PRWORA has no effect on the Respondent's property interest in continuing welfare benefits.

In the face of this record, with respect to both the meaning of Colorado state law and the factual understandings of the parties themselves, Petitioners resort to a false syllogism. Petitioners would have the Court conclude that the "no entitlement" provision in the ***federal*** law, the PRWORA, should have the effect of extinguishing a property interest that was created by ***state*** law, the CWPA. *See* Petition, at 16. This contention, however, has no precedent.

Moreover, the Petitioners' argument is in direct conflict with the actual text of the federal provision, which explicitly limits its effect to interpretations of the federal statute, rather than interpretations of any state statute: "***This part*** shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part." *See* 42 U.S.C. § 601(b) (emphasis added). Thus, whatever the Court may conclude that Congress meant with its "no entitlement" language in the federal statute, the provision can only be read as an instruction to courts considering the meaning of "This part" of the United States Code, *i.e.*, the PRWORA. *See id.* As a matter of plain text, the federal "no entitlement" language is not intended to affect judicial constructions of any state law. *See id.* Moreover, there is no evidence in the text of the PRWORA or in the legislative history of the statute that Congress intended its limited "no entitlement" provision to have any preemptive effect over property interests created exclusively through the operation

of state law.[5] *Cf. New York v. Federal Energy Regulatory Comm'n*, __ U.S. __, 122 S. Ct. 1012, 1023 (2002) ("[T]he Court 'start[s] with the assumption that the historic police powers of the States were not to be superseded . . . unless that was the clear and manifest purpose of Congress.'") (quoting *Hillsborough County v. Automated Med. Labs.*, 471 U.S. 707, 715 (1985)).

Indeed, there is absolutely no requirement in the federal PRWORA that requires the States to enact similar "no entitlement" provisions, and the vast majority of States have no such provision. Moreover, there is nothing in Colorado's "no entitlement" provision that indicates the Colorado language is anything other than an expression of Colorado policy with respect to Colorado's approach for funding the Colorado welfare program. *See* Colo. Rev. Stat. § 26-2-704(1).

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5. Even if the federal "no entitlement" provision could be read as authorizing, rather than requiring, the States to extinguish the due process rights of welfare participants, such an interpretation would be constitutionally impermissible. *See Saenz v. Roe*, 526 U.S. 489, 508 (1999) ("Congress has no affirmative power to authorize the States to violate the Fourteenth Amendment and is implicitly prohibited from passing legislation that purports to validate any such violation.").

The more likely and sensible interpretation of Congress' intent in enacting the "no entitlement" language in the federal statute is the one offered by the Colorado Court of Appeals. As that court suggested, the "no entitlement" language was meant to signal the end of an unconditional grant of welfare benefits and to prevent potential recipients of benefits under state-administered welfare programs from suing to require the ***federal*** government to fund the ***state*** welfare programs. *See* App. A, at 12a.

In construing Colorado ***state*** law to create "property" in continuing welfare benefits, the courts below fully respected the hortatory "no entitlement" language of the ***federal*** statute. Thus, and as required by the PRWORA, the courts below did ***not*** interpret that statute "to entitle any individual or family to assistance." *See* 42 U.S.C. § 601(b). Instead, the courts below found the source of the Respondent's right to continuing welfare benefits to emanate from Colorado state law, rather than the federal law. *See* App. A, at 13a; App. B, at 36a. Without any affront to the federal statute, the courts below concluded that the numerous mandatory grant provisions contained in the CWPA create the mutual and explicit expectation of continued receipt of benefits that is sufficient to trigger a "property" right for purposes of due process analysis. *See id.*

In light of the fact that the Colorado courts were entitled to render their own interpretation of the meaning of the Colorado statutes in question, *see Clover Leaf Creamery*, 449 U.S. at 484-85, and in having done so, found a property interest created under state law, this Court is bound by those courts' interpretation of Colorado law, which found that Respondents had a property interest that was subject to the requirements of the Due Process Clause of the Fourteenth Amendment. *See Perry*, 408 U.S. at 601. As a result, any sanction under the Colorado Works Program, because of its effects on a protected property interest, is subject to the requirements of procedural due process. *See Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

III.

This Court Should Not Review Issues That Are Not Fairly Included Within The Question Presented.

At the close of their Petition, Petitioners raise two issues, without the benefit of any point-headings or argument outline, concerning: (1) the constitutional adequacy of the sanction notices; and (2) the *Parratt/Hudson* doctrine. *See* Petition, at 17-19. Both of these issues, however, are far afield from the "Question Presented" stated by Petitioners in their Petition. *See id.*, at i.

This Court will not review issues that are not "fairly included" within the question presented by a petitioner. *See* S. Ct. R. 14(1)(a); *see also Izumi Seimitsu Kogyo Kabushiki Kaisha v. United States Philips Corp.*, 510 U.S. 27, 30-31 (1993). Thus, in addition to the substantive reasons presented below, the Court should not consider the final arguments by Petitioners because these issues are not fairly included within the Question Presented.

Nevertheless, even if the Court chooses to consider these issues, neither issue provides a basis for the grant of a Writ.

A. The record fully supports the trial court's conclusion that the sanction notices were constitutionally inadequate.

Petitioners contend that the trial court erred by including as one of the defects of the sanction notices the fact that the notices did not "contain the exact monetary amount of the sanction and the exact monetary effect that sanction may have on any future sanctions." *See* Petition, at 17. Petitioners contend this finding goes too far under the constitution. *See id.*

Petitioners, however, completely ignore the multitude of other, and more substantial, defects in the sanction notices that were found by the trial court and which they did not challenge in the Colorado Court of Appeals or in their petition for state *certiorari* from the Colorado Supreme Court. *See* App. B, at 42a-46a (cataloguing the various deficiencies of the more than 4,000 sanction notices entered into evidence in this case). In fact, the trial court found that among the various deficiencies of the sanction notices, the most consistent defect was a failure to correctly explain the factual basis for the sanction. *See* App. B, at 42a.

Numerous lower courts have held, with no evidence of controversy on this point between the Circuits or among the States, that due process in the context of welfare benefits requires a written notice that explains the reasons for a reduction in benefits, and the reason must be stated in terms and with enough detail so that the person receiving the notice can understand it and be prepared for the issues to be addressed at a hearing, if one is requested. *See Gray Panthers v. Schweiker*, 652 F.2d 146, 168 (D.C. Cir. 1981); *Dilda v. Quern*, 612 F.2d 1055, 1057 (7th Cir. 1980); *Doston v. Duffy*, 732 F. Supp. 857, 872 (N.D. Ill. 1988); *Ortiz v. Eichler*, 616 F. Supp. 1046, 1061-62 (D. Del. 1985), *aff'd*, 794 F.2d 889 (3d Cir. 1986); *Meyer v. New Jersey Dep't of Human Servs.*, 635 A.2d 544, 546-47 (N.J. App. Div. 1993).

The trial court found as matter of fact that the sanction notices issued by Adams County failed in every instance to apprise the participant of the specific reasons for the sanction or to provide sufficient information for the participant to be prepared for a hearing on the sanction. *See* App. B, at 42a. As a result, regardless of whether showing the exact amount of money at issue in a sanction is a requirement of

constitutional due process, it is clear that the sanction notices failed to provide the kind of notice and opportunity to be heard that lies at the core of the Due Process Clause. *See Goldberg*, 397 U.S. at 267-68.

B. The *Parratt/Hudson* doctrine is inapposite in this case because the deprivation of property by Petitioners was not "random and unauthorized."

The final issue discussed by Petitioners in their Petition is their contention that Respondents' Section 1983 claim for a federal, procedural due process violation should have been barred under *Parratt v. Taylor*, 451 U.S. 527 (1981), and *Hudson v. Palmer*, 468 U.S. 517 (1984), purportedly because Respondents could have received the relief sought in this case under Colorado's declaratory judgment statute. *See* Petition, at 18-19. Petitioners contend that the courts below "ignored" the availability of this state-law remedy. *See id.*, at 19.

One reason the courts below "ignored" this argument is that Petitioners never properly raised it. Petitioners did not raise this argument at any time during the proceedings in the trial court, and they failed to present this argument in the appellate courts until their reply brief to the Colorado Court of Appeals. *See Vanderbeek v. Vernon Corp.*, 25 P.3d 1242, 1248 (Colo. Ct. App. 2000) (holding that an issue raised for the first time in a reply brief will be deemed waived). On this basis alone, the issue must be deemed waived. *See Yee v. City of Escondido*, 503 U.S. 519, 533 (1992) (refusing to review claims that were not raised or addressed by the state courts below).

Moreover, Petitioners' argument here is misguided because Respondents did seek relief under Colorado's declaratory judgment statute. *See* R., I, 115-187A. Indeed, one of the remedies awarded by the trial court was quite plainly a declaratory judgment finding Adams County's sanction notices were legally inadequate. *See* App. B, at 49a. Second, Petitioners' argument misses the mark because the *Parratt/Hudson* doctrine applies ***only*** in situations whether the deprivation of property results from "random and unauthorized" action by state actors. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436-37 (1982). In contrast, when a deprivation of property occurs as a result of a standard policy or practice of state agency, as the courts below found in this case, then a plaintiff may bring a procedural due process claim. *See id.*

Because the trial court found that both CDHS and Adams County had consistently failed to provide adequate sanction notices over a prolonged period of time, *see* App. B., at 40a-47a and 49a, the deprivation of property in this case was not the result of "random and unauthorized" acts. *See id.* As a result, the *Parratt/Hudson* doctrine is completely inapposite.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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